

## **DRAFT STATUTORY INSTRUMENT TO ILLUSTRATE THE USE OF THE CLAUSE 17(1) POWER UNDER THE EUROPEAN UNION (WITHDRAWAL) BILL**

### **DExEU Note on the Draft Statutory Instrument: The European Union (Definition of Treaties Orders) (Revocation) (EU Exit) Regulation 2018**

#### **Context and Overview**

This is an illustrative SI that revokes the totality of Specification Orders made under section 1(3) of the European Communities Act 1972 (“ECA”) to demonstrate how the powers in the Bill might be used. This illustrative draft is without prejudice to the withdrawal agreement or any future policy objectives in respect of the agreements specified under the Orders.

After the UK’s exit from the EU, Specification Orders will serve no purpose as the UK will no longer be implementing EU treaties via the ECA. This illustrative SI therefore revokes these Specification Orders under clause 17(1) in consequence of the repeal of the ECA.

This draft SI is being shared as an illustrative sample to show how the powers in the Bill may be used to revoke Specification Orders. It should not be taken as the final version.

#### **Detail**

Specification Orders, formally referred to as Definition of Treaties Orders are Orders in Council and provide for the treaties, international agreements or other relevant texts that they specify to be regarded as EU Treaties for the purpose of section 1(2) of the ECA. Many of these Orders are not in force because the Treaty they specify has itself not been brought into force. The principal effect of such treaty, agreement or relevant texts being regarded as an EU Treaty is that section 2 of the ECA applies to it - this provides powers to implement the treaty domestically, allows directly effective rights under those treaties to flow into domestic law and provides legal authority for spending in relation to the treaty.

The EU (Withdrawal) Bill will incorporate the definition of EU Treaties, as it stood on exit day, into the Interpretation Act 1978 so references across the statute book to “EU Treaties” will still include the treaties specified in these orders despite these orders being repealed. After the UK’s exit from the EU, Specification Orders will serve no purpose as the UK will no longer be implementing EU treaties via the ECA. This illustrative SI therefore revokes these Specification Orders under clause 17(1) in consequence of the repeal of the ECA.

The European Union (Definition of Treaties Orders) (Revocation) (EU Exit) Regulation 2018 is an example of the clause 17(1) power’s use. It revokes legislation that is legally redundant as a result of the Bill repealing the ECA. The revocation of a specification order has no effect on whether or not the UK remains party to an international treaty specified in that order. Importantly, as an illustrative draft, this instrument does not seek to presuppose or inform, in any kind of way, on the UK’s position relating to international agreements it may wish to remain part of once the UK has exited the EU.

Again, this draft SI is being shared as an illustrative sample to show how the powers in the Bill may be used to revoke Specification Orders. It should not be taken as the final version.

This SI would be subject to the negative resolution procedure.